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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

12 CR 171 (JPO)

5 MICHAEL BARUKHIN,

6 Defendant.

7 -----x  
8  
9 New York, N.Y.  
10 May 23, 2013  
11 2:45 p.m.  
12

13 Before:

14 HON. J. PAUL OETKEN,

15 District Judge

16 APPEARANCES

17 PREET BHARARA

18 United States Attorney for the  
19 Southern District of New York

20 DANIEL GOLDMAN

21 Assistant United States Attorney

22 PRIYA CHAUDHRY

23 Attorney for Defendant Barukhin

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1 (Case called)

2 MR. GOLDMAN: Daniel Goldman, for the government.

3 MS. CHAUDHRY: Priya Chaudhry. With me at counsel  
4 table is Brian Moon, for Mr. Barukhin who is seated between us  
5 and present.

6 THE COURT: Good afternoon.

7 I understand the defendant wishes to plead guilty to  
8 the superseding information Counts One through Three. Is that  
9 correct?

10 MS. CHAUDHRY: That is correct, your Honor.

11 THE COURT: OK. So, we'll start with the arraignment  
12 on the superseding information which is S15.13 Mr. Barukhin, did you sign this waiver of indictment  
14 form?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you discuss it with your attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: You understand you are under no obligation  
19 to waive indictment?

20 THE DEFENDANT: Yes.

21 THE COURT: You understand that if you choose not to  
22 waive indictment then the government would have to present its  
23 case to the grand jury?

24 THE DEFENDANT: Yes.

25 THE COURT: OK. And by signing this waiver of

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1 indictment you are giving up your right to have the case  
2 presented to the grand jury. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: OK. I find the defendant's knowingly and  
5 voluntarily waiving his right to be indicted by a grand jury  
6 with respect to these three counts. You've seen a copy of the  
7 superseding information with the three counts?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you had a chance to read it and  
10 discuss it with your counsel?

11 THE DEFENDANT: Yes.

12 THE COURT: You do understand the charges against you?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you waive the public reading of the  
15 superseding information?

16 THE DEFENDANT: Yes.

17 THE COURT: I therefore authorize the filing of the  
18 superseding information. And am I correct that you wish to  
19 plead to Counts One, Two and Three of the superseding  
20 information?

21 THE DEFENDANT: Yes.

22 THE COURT: OK. Before accepting your guilty plea I  
23 am going to ask you certain questions so that I can establish  
24 to my satisfaction that you wish to plead guilty because you  
25 are guilty and not for some other reason. If you do not

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1 understand any of my questions or if you wish a further  
2 opportunity to consult with your attorneys, please, let me  
3 know, OK?

4 please place the defendant under oath.

5 (Defendant Michael Barukhin sworn)

6 THE COURT: You can be seated during this only because  
7 it's actually easier to hear with the microphone.

8 Mr. Barukhin, you are now under oath. And that means  
9 if you answer any of my questions falsely, your answers could  
10 be used against you in a prosecution for perjury. Do you  
11 understand?

12 THE DEFENDANT: Yes.

13 THE COURT: Please state your full name.

14 THE DEFENDANT: Michael Barukhin.

15 THE COURT: It's B-a-r-u-k-h-i-n?

16 THE DEFENDANT: Yes.

17 THE COURT: How old are you Mr. Barukhin?

18 THE DEFENDANT: 33.

19 THE COURT: OK. And how far did you go in school?

20 THE DEFENDANT: Some college.

21 THE COURT: Say again.

22 THE DEFENDANT: Some college, two years.

23 THE COURT: Where was that?

24 THE DEFENDANT: Long Island University.

25 THE COURT: OK.

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1 MS. CHAUDHRY: Your Honor, does he need to move his  
2 mic closer?

3 THE COURT: Yes, please.

4 Mr. Baruch, have you ever been treated or hospitalized  
5 for any mental illness?

6 THE DEFENDANT: No.

7 THE COURT: Are you now or have you recently been  
8 under the care of a psychiatrist or doctor?

9 THE DEFENDANT: No.

10 THE COURT: Have you ever been hospitalized for  
11 addiction to drugs or alcohol?

12 THE DEFENDANT: No.

13 THE COURT: In the past 24 hours have you taken any  
14 drugs or medicine or alcohol?

15 THE DEFENDANT: No.

16 THE COURT: Is your mind clear today?

17 THE DEFENDANT: Yes.

18 THE COURT: You understand what's happening in this  
19 proceeding today?

20 THE DEFENDANT: Yes.

21 THE COURT: Does either counsel have any doubt as to  
22 the defendant's competence to plead today?

23 MR. GOLDMAN: No, your Honor.

24 MS. CHAUDHRY: No, your Honor.

25 THE COURT: OK. Based on his responses to my

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1 questions and his demeanor, I find the defendant is competent  
2 to enter a plea of guilty today.

3 Mr. Barukhin, have you had a sufficient opportunity to  
4 discuss your case with your attorneys?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had a sufficient opportunity to  
7 discuss the charges you intend to plead guilty to, any possible  
8 defenses and the consequences of pleading guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you satisfied with their  
11 representation of you?

12 THE DEFENDANT: Yes.

13 THE COURT: I am now going to explain certain  
14 constitutional rights that you have. You will be giving up  
15 those rights if you enter a plea of guilty. Under the  
16 Constitution and laws of the United States you are entitled to  
17 a speedy and public trial by a jury on the charges contained in  
18 the superseding information. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: At that trial you would be presumed  
21 innocent and the government would be required to prove you  
22 guilty by competent evidence and beyond a reasonable doubt  
23 before you could be found guilty. You would not have to prove  
24 that you were innocent. A jury of 12 people would have to  
25 agree unanimously that you were guilty. Do you understand

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1 that?

2 THE DEFENDANT: Yes.

3 THE COURT: At that trial and at every stage of your  
4 case you would be entitled to be represented by an attorney and  
5 if you could not afford one, one would with be appointed to  
6 represent you. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: During that trial the witnesses for the  
9 government would have to come to court and testify in your  
10 presence and your lawyer could cross-examine the witnesses for  
11 the government, object to evidence offered by the government  
12 and if you desired, issue subpoenas, offer evidence and compel  
13 witnesses to testify on your behalf. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: At that trial although you would have the  
16 right to testify, if you chose to, you would also have the  
17 right not to testify and no inference or suggestion of guilt  
18 could be drawn from the fact that you didn't testify if you  
19 chose not to. Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: If you were convicted at trial you would  
22 have the right to appeal that verdict. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Even at this time today as you're entering  
25 that plea, you do have the right to change your mind if you

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1 wish to you and plead not guilty and go to trial. Do you understand  
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: If you do plead guilty and if I accept  
5 your plea you will be giving up the right to trial and other  
6 rights I've described. There will be no trial but I will enter  
7 a judgment of guilty, then sentence you later on the basis of  
8 your guilty plea. But my sentencing will only be after I  
9 consider any submissions I get from you and your counsel, as  
10 well the lawyer for the government and the probation  
11 department's presentence report. Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: If you plead guilty you will also have to  
14 give up your right to not incriminate yourself since I will ask  
15 you questions about what you did in order to satisfy myself  
16 that you are guilty as charged. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: You say you've received a copy of the  
19 superseding information containing the plea charges against you  
20 and you have had a chance to read it and discuss it with your  
21 lawyers.

22 THE DEFENDANT: Yes.

23 THE COURT: I'll ask counsel for the government,  
24 Mr. Goldman, if you would please proffer the elements that the  
25 government would seek to prove at trial with respect to the

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1 Counts One, Two and Three.

2 MR. GOLDMAN: Count One charges a conspiracy to commit  
3 healthcare fraud in violation Title 18 U.S.C. 1347 and 1349.

4 There are two elements of conspiracy.

5 First, the existence of the conspiracy as charged in  
6 the indictment, that is, agreement or understanding to commit  
7 healthcare fraud.

8 And second, the defendant willingly and knowingly  
9 became a member of the conspiracy.

10 Healthcare fraud has three elements. First, that  
11 there was either a scheme or artifice to defraud a healthcare  
12 benefit program or to obtain based on false and fraudulent  
13 pretenses, representations, or promises, money or property  
14 under the control, custody or control of a healthcare benefit  
15 program.

16 Second, that the defendant knowingly and willfully  
17 participated in the scheme or artifice with knowledge of its  
18 fraudulent nature and with specific intent to defraud.

19 And third that the scheme was conducted in connection  
20 with the delivery of or payment for healthcare benefits, items  
21 or services.

22 Count Two charges conspiracy to commit money  
23 laundering. The two elements of the conspiracy are the same as  
24 those for Count One. There are three objects of this  
25 conspiracy.

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First is promoting unlawful activity under 1956 (a)(1)(A)(1). That has four elements.

First, that the defendant knowingly conducted or tried to conduct a financial transaction.

Second, that the defendant knew that the money or proper involved in the transaction were the proceeds of some kind of unlawful activity.

Third, that the money and property did come from unlawful activity, specifically, in this case the healthcare fraud described in Count One.

And fourth, the defendant was involved in the financial transaction with the intent to promote the carrying on of that specified unlawful activity.

The second object is financial transaction to conceal proceeds under Section 1956 (a)(1)(B)(1). That also has four elements.

First, the defendant conducted a financial transaction. That is, that affected interstate or foreign commerce.

Second, that the sating defendant conducted a financial transaction that involved proceeds of healthcare fraud as charged in Count One.

Third, that at the time the defendant conducted the financial transaction the defendant knew that the transaction represented the proceeds of some form of unlawful activity.

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1                   And fourth, that the defendant conducted a financial  
2 transaction knowing that the transaction was designed in whole  
3 or in part to conceal or disguise the nature, location, source  
4 ownership or control of the proceeds of healthcare fraud.

5                   The final object of Count Two under Section 1957 has  
6 five elements.

7                   First, the defendant engaged in the monetary  
8 transaction in or affecting interstate commerce.

9                   Second, the monetary transaction involved criminally  
10 derived property of a value greater than \$10,000.

11                   Third, that the property was derived from specified  
12 unlawful activity, that is healthcare fraud.

13                   And fourth, that the defendant acted knowingly, that  
14 is with knowledge of the transaction involved the proceeds of  
15 the healthcare fraud.

16                   And fifth, at transaction took place in the United  
17 States.

18                   Count Three charges operation of an illegal gambling  
19 business under Title 18 U.S.C. Section 1955. There are three  
20 elements as well, that the defendant conducted, financed,  
21 managed, supervised, directed or owned all or part of a  
22 gambling business that is in violation of New York Law. The  
23 New York Law makes, New York Penal Law Section 22505 makes it a  
24 crime to run a poker game with a rake with a fee paid to the  
25 owners by the players.

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1                   Second, that the business employed five or more  
2 persons.

3                   And third the gambling business, in this case the  
4 poker game, was in operation for 30 or more days and had a  
5 gross revenue of two thousand dollars or more in one day.

6                   THE COURT: Thank you, Mr. Goldman.

7                   Those are the elements of the three counts of the  
8 superseding information. In the event that there were a trial  
9 those are the elements that I'd be instructing the jury as to  
10 each count they must find each of those elements beyond a  
11 reasonable doubt. I also want what explain to you the maximum  
12 potential penalties for those three counts under the statute,  
13 the applicable statutes.

14                   First, with respect to Count One, conspiracy to commit  
15 healthcare fraud, there's a maximum term of imprisonment under  
16 the statute of ten years, a maximum term of supervised release  
17 of three years. Supervised release means that you are subject  
18 to monitoring following release of incarceration. There are  
19 terms of supervised release you must comply with. And if you  
20 do not comply with those terms you can be returned to prison  
21 without a jury trial. Also, a maximum fine of greatest of  
22 \$250,000 or twice the total monetary gain from the offense or  
23 twice the total monetary loss to others from the offense and a  
24 \$100 a special assess amount.

25                   With respect to Count Two, conspiracy to commit money

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1 laundering, there is a maximum term under the statute of  
2 imprisonment of 20 years, a maximum term of supervised release  
3 of three years and a maximum fine of the greatest of \$500,000  
4 or twice the total value of the property involved in the  
5 offense. And finally a mandatory \$100 special assessment.

6 Finally, with respect to Count Three, operating an  
7 illegal gambling business, the maximum term of imprisonment is  
8 five years, the maximum term of supervised release is three  
9 years, the maximum fine is the greatest of \$250,000 or twice  
10 the total monetary gain from the offense or twice the total  
11 monetary loss to others from the offense. Finally a one  
12 hundred dollar mandatory special assessment on Count Three.

13 So the total maximum term as to all three counts on  
14 Counts One, Two and Three is 35 years imprisonment. In  
15 addition, as part of your plea agreement you would admit to the  
16 forfeiture allegation and agree to forfeit to the United States  
17 a sum of \$2,371,563.83 representing the amount of the proceeds  
18 obtained in the conduct underlying Counts One and Two. In  
19 addition, you would agree to make restitution in the same  
20 amount.

21 Mr. Barukhin, are you a United States citizen?

22 THE DEFENDANT: Yes.

23 THE COURT: If your attorney or anyone else has  
24 attempted to predict what your sentence will be or will likely  
25 be, their prediction could be wrong and because I am the one

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1 who will determine your sentence, not today but after  
2 considering the submissions that I mentioned. So in terms of  
3 someone predicting what your sentence can be, they might be  
4 wrong. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: As I said, I am going to wait until I  
7 receive the presentence report the probation department will  
8 prepare and give you a chance and the government a chance to  
9 submit any written submissions relating to how I should  
10 sentence you. And I'll consider the sentencing guidelines as a  
11 starting point but then, ultimately, determine based on the  
12 sentencing factors in the statute 18 U.S.C. 3553(A) what an  
13 appropriate sentence is for you considering all those factors.

14 Have you discussed these issues with your counsel?

15 THE DEFENDANT: Yes.

16 THE COURT: Even if your sentence is different from  
17 what you expected it to be or what someone has told you it's  
18 likely it to be, you will still be bound by your guilty plea  
19 and will not be allowed to withdraw your plea of guilty. Do  
20 you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Had has anyone threatened your or forced  
23 you in any way to plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: And there's plea agreement. Did you sign

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1 this plea agreement with the government?

2 THE DEFENDANT: Yes.

3 THE COURT: When did you sign it?

4 THE DEFENDANT: A few minutes ago.

5 THE COURT: OK. Before you signed it did you have a  
6 chance to read it and discuss it with your counsel?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you feel you understand what's agreed  
9 to in the agreement?

10 THE DEFENDANT: Yes.

11 THE COURT: OK. Is there anything that's been left  
12 out of the agreement in terms of your understanding with the  
13 government?

14 THE DEFENDANT: No.

15 THE COURT: Did anyone force you to sign the  
16 agreement?

17 THE DEFENDANT: No.

18 THE COURT: Under this agreement there's what is  
19 called a stipulated guideline range. And as you probably know  
20 the sentencing guidelines as I said are the starting point.  
21 They come up with an advisory range in determining a sentence  
22 but I am not bound by them ultimately. I can go below them or  
23 above them but they are the starting point in imposing  
24 sentence. And based on the what the parties understand as  
25 reflected in this agreement, this stipulated guidelines range

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1 is 57 to 71 months incarceration. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And there's a stipulated fine range under  
4 the guidelines of \$10,000 to \$100,000 in fines. Do you  
5 understand that this stipulation binds the government and you  
6 but not me because as I said I will be making my own  
7 calculation of your sentence under the guidelines?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that under this  
10 agreement you are giving up your right to appeal or challenge  
11 your sentence if sentenced to 71 months or less that is the top  
12 of the range in prison?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, Mr. Barukhin, will you please tell me  
15 your own words what you did that makes believe you are guilty  
16 of three counts in the superseding information.

17 THE DEFENDANT: From at least in or about 2010 up  
18 through and including on or about February 29, 2012 in the  
19 Southern District of New York, I willfully and knowingly  
20 conspired with others to commit healthcare fraud.

21 In furtherance of this conspiracy, I owned an interest  
22 in certain medical professional corporations and knowingly  
23 misrepresented to insurance companies that they were owned,  
24 operated and controlled by medical professionals. I am not a  
25 medical professional. I submitted no-fault insurance claims to

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1 various automobile insurance carriers on behalf of these  
2 medical professional corporations and falsely represented on  
3 those claims that those professional corporations were owned,  
4 operated and controlled by licensed medical professionals. I  
5 knew that some of the bills were mailed to insurance companies  
6 located in Manhattan.

7 From in or about 2010, up through and including on or  
8 about February 29, 2012 in the Southern District of New York, I  
9 willfully and knowingly conspired with others to commit money  
10 laundering. I knew that my co-conspirators engaged in  
11 financial transactions -- fraud scheme that were designed to  
12 conceal the source of funds and to promote the healthcare  
13 fraud scheme. I knew that some of the money received through  
14 the healthcare fraud scheme was cashed through check cashers  
15 and then knowingly used to make kickback payments in order to  
16 promote the healthcare scheme.

17 I also knew that my co-conspirators would knowingly  
18 engage in financial transactions involving greater than \$10,000  
19 in proceeds fraudulently obtained through insurance companies  
20 including the payments by check or funds in excess of \$10,000  
21 from bank accounts that received fraudulently obtained funds to  
22 other bank accounts controlled by my co-conspirators. I  
23 received some of the proceeds from these transactions. I knew  
24 that the proceeds from the healthcare fraud scheme were  
25 received from insurance companies located in Manhattan.

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1                   In or about 2009 in the Eastern District of New York I  
2 knowingly and willfully owned a part of an illegal gambling  
3 business. Along with four other individuals I operated an  
4 illegal poker business in Brooklyn, New York. And on at least  
5 one day we made more than two thousand dollars. This poker  
6 business was illegal because the owners were paid a fee by the  
7 players for operating the game. I waive any challenge as to  
8 venue regards to this charge of operating an illegal gambling  
9 business.

10                  THE COURT: Thank you. When you did these acts did  
11 you know that what you were doing was illegal?

12                  THE DEFENDANT: Yes.

13                  THE COURT: Did you know it was wrong?

14                  THE DEFENDANT: Yes.

15                  THE COURT: Does the government counsel agree that  
16 there's sufficient factual predicate for the guilty plea?

17                  MR. GOLDMAN: Yes, your Honor.

18                  THE COURT: Does the defense?

19                  MS. CHAUDHRY: Yes, your Honor.

20                  THE COURT: Does the defense counsel know of any valid  
21 defense that would prevail at trial or any reason Mr. Barukhin  
22 should not plead guilty?

23                  MS. CHAUDHRY: I do not.

24                  THE COURT: Mr. Barukhin since you acknowledge that  
25 you are, in fact, guilty as charged and since I am satisfied

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1 that you know of your rights including your right to go to  
2 trial, that you are aware of the consequences of your plea,  
3 including the sentence that may be imposed and since I find  
4 that you are voluntarily pleading guilty, I accept your guilty  
5 plea and I enter a judgment of guilty on Counts One, Two and  
6 Three of the superseding information S15 in this case to which  
7 you have pleaded guilty.

8 Now, turning to sentencing, the probation department  
9 will want to interview you in connection with that presentence  
10 report that it will prepare. It has a lot of information in it  
11 about these offenses, about your background, your family,  
12 everything and I read it very carefully before I decide on  
13 sentence. So please make sure that anything you say to them is  
14 accurate and anything when you get a chance to read the draft  
15 of the report that if there are any mistakes in it that  
16 clarification, you let Ms. Chaudhry know.

17 In terms of timing I understand that counsel and the  
18 government agreed to an October sentencing date. Is that  
19 correct? I have object to 17th, two p.m.

20 MR. GOLDMAN: Fine, your Honor.

21 MS. CHAUDHRY: That's fine.

22 THE COURT: So sentencing will be Thursday,  
23 October 17, two p.m.

24 And defendant's counsel, I think you'll hear from the  
25 probation department about setting up the interview. If you

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1 will please arrange for that promptly so the process for  
2 preparing PSR can be done on time.

3 MS. CHAUDHRY: Absolutely.

4 THE COURT: Defense submissions will be due two weeks  
5 before sentencing. The government's submission due one week  
6 before. So any written submissions will be due October 3rd for  
7 defendant and October 10th for the government.

8 Is there any objection to present bond being continued  
9 to the date of sentence?

10 MR. GOLDMAN: One moment, your Honor?

11 (Pause)

12 MR. GOLDMAN: No change, your Honor.

13 THE COURT: Mr. Barukhin, all the conditions of your  
14 release on bail continue to apply up to the date of sentence  
15 and make sure you continue to comply with those conditions. I  
16 know you have a violation of any of those conditions could have  
17 a negative impact on the sentence. Then you must be in  
18 courtroom on the date of sentencing which is October 17 at two  
19 o'clock. If you miss the sentencing date it's a separate crime  
20 known as bail jumping, so make sure you are here on October 17,  
21 two o'clock. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Anything else?

24 MR. GOLDMAN: No.

25 MS. CHAUDHRY: No, your Honor.

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1 THE COURT: Thank you very much.

2 (Adjourned)

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